

**To:** "Obegi, Doug" [dobegi@nrdc.org]  
**From:** "Obegi, Doug"  
**Sent:** Wed 1/27/2010 2:59:14 AM  
**Subject:** Fw: San Luis / Kern Plaintiffs' Letter to Senator Feinstein re ESA  
[Legislation to Restore Water Supplies 100126.pdf](#)

Dear friends,

Attached is a Jan 25 letter from Central Valley water agencies (SLDMWA and KCWA) to Senator Feinstein, responding to her letter earlier this week about 2 Gates and the ESA.

After stating that her "response reflects some common misunderstandings" about water allocations and operations, the letter requests that Senator Feinstein introduce legislation mandating that implementation of the 2004 FWS BO and the 2005 NMFS BO satisfy ESA requirements. It further claims that this would comply with the ESA's requirements regarding the best available science.

As most of you know, those 2004 and 2005 biological opinions were invalidated by the federal courts as violating the ESA. The court specifically held that those earlier BOs violated the requirement that the agencies use the best available science. In 2007 the Court imposed additional, interim remedies in the delta smelt case, and in 2008 the Court found that operations were jeopardizing salmon, steelhead, and other species. Their "best available science" has already been rejected by the Courts, and it doesn't provide any of the protections in the Delta that have been required by the Courts.

The letter comes at the same time that SLDMWA and other water agencies are seeking a temporary restraining order against implementation of the more recent biological opinions (hearing set for next week). It also comes as the National Academy of Sciences is meeting to review water management in the Delta, at the request of water users.

I think it is wholly inappropriate for SLDMWA to seek Congressional efforts to overturn the BOs at the same time that they participate in the BDCP process to obtain new ESA permits. If the BOs are not based on solid science, as Plaintiffs claim but have never proven in court, the Courts are the appropriate venue for that challenge (not to mention having the NAS/NRC venue as well). But seeking to fundamentally change the requirements of the ESA in the Delta, as SLDMWA's letter requests, fundamentally undermines the justification for the Bay Delta Conservation Plan (BDCP). If water users in BDCP are simply going to change the rules down the road, how can we trust that BDCP would actually be implemented and that the water projects would be operated in a sustainable manner? I think that is why the State of California and some other water users oppose efforts to weaken or waive the ESA.

Sigh... Apologies for the rant, but I wanted to make sure everyone saw this attack on the ESA and BDCP, and had the background on what they're really asking for. Feel free to contact me if you want to follow up.

Take care,  
Doug

From: Gupta, Andy  
To: Obegi, Doug; Poole, Kate  
Sent: Tue Jan 26 17:23:51 2010  
Subject: San Luis / Kern Plaintiffs' Letter to Senator Feinstein

Andy Gupta

Program Assistant

Water Program

Natural Resources Defense Council

415.875.6100 (Phone)

415.875.6161 (Facsimile)

Please consider the environment before printing this email.

**PRIVILEGE AND CONFIDENTIALITY NOTICE**

This message is intended only for the addressee and may contain information privileged confidential, and exempt from disclosure under law. If you are not the intended recipient, please notify me immediately by email and delete the original message.